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provided whereby a person may inspect the material and obtain copies of that which is shelved. Fees shall not be charged for access to materials, but fees are to be charged in accordance with §1.7 for copies of material provided to the person. (See the appendices to this subpart for the location of established reading rooms of components of the Department of the Treasury.)

§1.5 Specific requests for other records.

(a) *In general.* Except for records made available under §§1.3 and 1.4, above, but subject to the application of the exemptions described in §1.2(c) above, each component of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a) (3). The request must be for reasonably described records and conform in every respect with the rules and procedures of this subpart A, particularly this section, §1.7 and the applicable appendix to this subpart. Any request or any appeal from the initial denial of a request that does not comply with the foregoing requirements and those set forth elsewhere in subpart A will not be considered subject to the time constraints of paragraphs (g), (h), and (i) of this section, unless and until the request is amended to comply. Components shall promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this subpart. When the request conforms with the requirements of this subpart, components shall make every reasonable effort to comply with the request within the time constraints. This subpart applies only to existing records in the possession or control of the component. There is no requirement that records be created or data processed in a format other than required for governmental purposes in order to comply with a request for records.

(b) *Requests for records not in control of component.* (1) When the record requested is in the possession or under the control of a component of the Department other than the office to whom the request is addressed, the re-

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quest for the record shall immediately be transferred to the appropriate component and the requester notified to that effect. This referral shall not be considered a denial of access within the meaning of these regulations. The component of the Department to whom this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (g)(1) of this section shall begin when the referral is received by the designated office or officer of the component. Where the request is for a record which is not in the possession or control of any component of the Department of the Treasury, the requester shall be so advised and the request shall be returned to the requester.

(2) When an unclassified record created by another agency or another Treasury component is in the possession of a component of the Department of the Treasury, and that record is requested under the FOIA, the responsible Treasury official shall refer the record to the agency or Treasury component originating the record for a direct response to the requester. The requester shall be informed of the referral. However, where it is determined that the record is exempt from disclosure under the provisions of the FOIA (5 U.S.C. 552) and will be withheld from disclosure, the referral need not be made. In such an instance, the component of the Department that maintains the records shall inform the requester of the applicable appeal rights and shall notify the agency or component that originated the record(s) of the request and the determination not to release the record(s). If there is any subsequent change in this initial determination, the documents shall be referred to the originating agency or component for response to the requester.

(3) When a classified record originated by another agency or another component of the Department is in the possession of a component of the Department of the Treasury, and a FOIA request for that record is received, the request shall be referred to the originating Department, agency, or component of the Department for a direct response. This is not a denial of a FOIA

request; thus no appeal rights accrue to the requester.

(4) When a FOIA request is received for a record created by a component of the Department that includes information originated by another component of the Department or another agency, the record shall be referred to the originating agency or component of the Department for review, coordination, and concurrence. The Department component shall not release any records without prior consultation with the other component or agency.

(5) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more components of the Department shall be coordinated by the Departmental Offices.

(c) *Form of request.* In order to be subject to the provisions of this section, the following must be satisfied.

(1) The request for records shall be made in writing, signed by the person making the request, and state that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or these regulations. A request for records shall also state how the documents released will be used (See § 1.7(a)). The Departmental components may determine from the use specified in the request that the requester is a commercial user. A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. Moreover, where a component of the Department has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, components should seek additional clarification before assigning the request to a specific category.

(2) The request shall identify whether the requester is an educational institution, non-commercial scientific institution, or representative of the news media subject to the fee provisions described in § 1.7.

(i) These categories of requesters are defined as follows:

(A) *Educational institution.* This refers to a preschool, a public or private ele-

mentary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(B) *Non-commercial scientific institution.* This refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(C) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but components may also look to the past publication record of a requester in making this determination.

(3) The request must be addressed to the component that maintains the record. The request should be sent to the component at its proper address. Both the envelope and the request itself should be clearly marked "Freedom of Information Act Request," and

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addressed to the appropriate component. See the appendices to this subpart for the office or officer to which requests shall be addressed for each component. A requester in need of guidance in defining a request or determining the proper component to which a request should be sent may write to Disclosure Branch, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requests for certain historical records must be directed to National Archives in accordance with its regulations;

(4) The request must reasonably describe the records in accordance with paragraph (d) of this section;

(5) The request must set forth the address where the person making the request wants to be notified about whether or not the request will be granted;

(6) The request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) The request must state the firm agreement of the requester to pay the fees for duplication, search, and/or review as may ultimately be determined in accordance with § 1.7, or request that such fees be reduced or waived and state the justification for such request (see § 1.7(d)). The requester shall be promptly advised of the estimate of fees due and asked to agree to pay this amount, when:

(i) The initial request does not state a firm agreement to pay fees, but instead places an upper limit on the amount the requester agrees to pay, and this upper limit exceeds the limitations in § 1.7(a) (for example, the first 100 pages of reproduction and the first two hours of search time are furnished without charge, etc.), and is likely to be lower than the fees ultimately estimated to be due; or

(ii) The request is determined to be for a commercial use; or

(iii) The requester asks for an estimate of the fees to be charged; or

(iv) When the estimated fee is below \$250 but above the upper level set by the requester; or

(v) Whenever the estimate is above \$250 whether or not an upper level is set.

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Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver in accordance with § 1.7(d) of this part and notify the requester of this decision. If the decision results in the requester being liable for all or part of the fees normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph (c) will not be considered met until the requester has explicitly agreed to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due, see § 1.7(f).

(d) *Reasonable description of records.*

(1) The request for records must describe the records in reasonably sufficient detail to enable the Department of the Treasury employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the component. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If a component determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to refine the request. Such opportunity may, where desirable, involve a conference with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury as a device for improperly withholding records from the public.

(2) The Department of the Treasury will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 1.2(c). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of a component, the person making the request will be asked to be more specific

and to narrow the request. In addition, the person making the request will also be asked to agree on an orderly procedure for producing the requested records in order to satisfy the request without adversely affecting agency operations.

(e) *Date of receipt of request.* A request for records shall be considered to have been received for purposes of this subpart on the later of the dates on which:

(1) The requirements of paragraph (c) of this section have been satisfied, and, where applicable,

(2) The requester has agreed in writing, to pay the fees for search, duplication, and review determined due in accordance with § 1.7, or

(3) The fees have been waived in accordance with § 1.7(d), or

(4) Payment in advance has been received from the requester, when required in accordance with § 1.7(f). Requests for records, including prepayment, shall be promptly stamped with the date of receipt by the office prescribed in the appropriate appendix. A final notification of waiver of fees will be stamped with the date of transmittal by the appropriate office. For purposes of this subpart, the date of receipt of the request is the latest of these stamped dates. As soon as the date of receipt has been established, the requester shall be so informed. At this time the requester will also be advised when to expect a response within the time limits specified in paragraph (g)(1) of this section, unless extended as provided in paragraph (i)(1) of this section.

(f) *Search for record requested.* When a request is received, Department of the Treasury employees will search to identify and locate the requested records. Where a request includes documents stored at the Federal Records Center, the Department will make reasonable efforts to comply with the time constraints of the Act; however, delays in processing these requests are common and will usually require additional time. Searches for records maintained in computerized form include services functionally analogous to searches for records which are maintained in a conventional form. A component of the Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or

compile information for the purpose of creating a record.

(g) *Initial determination*—(1) *In general.* The officers designated in the appendices to this part will make initial determinations either to grant or to deny in whole or in part requests for records. These determinations will be made within 10 days excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (e) of this section, unless the designated officer invokes an extension pursuant to paragraph (i)(1) of this section or the requester otherwise agrees to an extension of the 10-day time limitation. The requester will be notified immediately of this determination.

(2) *Granting of request.* If the request is granted, and if the person making the request wants a copy of the requested records, a copy of these records shall be mailed to the requester by the component together with a statement of the fees for search and duplication, either at the time of the determination or shortly thereafter. In certain unusual circumstances, the Department may elect to coordinate the request involving two or more components; in such a case only one reply will be prepared. In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees involved in complying with the request. The records shall then promptly be made available for inspection at the time and place stated in a manner that will not interfere with their use by the Department of the Treasury and will not exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The procedure for inspection shall not unreasonably disrupt the operations of the component. The person making the request will not be allowed to remove the records from the room where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established

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fees prescribed by § 1.7. Fees may be charged for search time as stated in § 1.7, and for copies made available for inspection.

(3) *Denial of request.* If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the applicable exemptions relied on in not granting the request, set forth the name and title or position of the responsible official, advise the person making the request of the right to administrative appeal in accordance with paragraph (h) of this section, and specify the official or office to which such appeal shall be submitted. Fees may be charged for search time as prescribed in § 1.7, even if the time spent searching does not yield any records, or if records are denied.

(4) *Inability to locate records within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension of that period as specified in paragraph (i)(1) of this section, the search for the records shall continue. The requester shall be notified of this delay and asked to agree to a voluntary extension of time in which to locate the records. Agreeing to this voluntary extension of time will not be considered a waiver of the requester's right to appeal in the event of the Department's failure to comply with the time extension granted. The requester shall be advised that this notification may be considered a denial of access within the meaning of paragraph (g)(3) of this section, and be provided with the address to which an administrative appeal may be addressed.

(h) *Administrative appeal.* (1) When a request for access to records has been denied in whole or in part, or when there has been an adverse determination of the requester's category as described in § 1.5(c)(1) and provided in § 1.7(d)(4), the requester may appeal the denial at any time within 35 days of receipt of a notice denying the request or the date of the letter transmitting the

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last records released, whichever is later. The requester may also appeal when a component fails to respond to a request within the time limits set forth in the FOIA. The administrative appeal may be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination to deny access to the records. An appeal that is improperly addressed will be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal. The appeal shall—

(i) Be made in writing and signed by the requester;

(ii) Be addressed to and mailed or hand delivered, within 35 days of the date of the initial determination, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed.);

(iii) Reasonably describe, in accordance with paragraph (d) of this section, the records requested from the denial of access to which an appeal is being taken;

(iv) Set forth the address where the requester desires to be notified of the determination on appeal;

(v) Specify the date of the initial request and date of the letter denying the initial request; and

(vi) Petition such official to grant the request for records and state any supporting arguments.

(2) Appeals shall be promptly stamped with the date of their receipt by the office to which addressed. This stamped date will be considered to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged by the responsible official and the requester advised of the date the appeal was received and the expected date of response. The determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph

(i)(1) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part)—

(i) The requester shall be notified in writing of the denial;

(ii) The reasons for the denial, including the FOIA exemptions relied upon;

(iii) The name and title or position of the official responsible for the denial on appeal;

(iv) A statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

If the denial of the request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(3) If a determination cannot be made within the 20-day period (or any extension pursuant to paragraph (i)(1) of this section) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (k) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of the 20 day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(i) *Time extensions*—(1) *10-day extension*. In unusual circumstances, the time limitations specified in paragraphs (g) and (h) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. Any extension or extensions of time shall not cumulatively total more than 10 additional working days. (For example, if an extension pursuant to this subparagraph is invoked in connection with an initial determination, any unused days of the

extension period may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellate review.) As used in this paragraph, “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request, the following:

(i) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the official to whom the request is made is located;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Department of Treasury or within a component (other than the legal staff or the component concerned with public affairs) having substantial subject-matter interest. Consultations with personnel of the Department of Justice concerned with requests for records under 5 U.S.C. 552 do not constitute a basis for an extension under this subdivision.

(2) *Extension by judicial review*. If a component of the Department of the Treasury fails to comply with the time limitations specified in paragraph (g) or (h) of this section and the person making the request initiates a suit in accordance with paragraph (k) of this section, the court in which the suit was initiated may retain jurisdiction and allow the component additional time to review its records, provided that the component demonstrates the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

(j) *Failure to comply*. If a component of the Department of the Treasury fails to comply with the time specified in paragraph (g), (h), or (i) of this section,

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any person making a request for records shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (k) of this section.

(k) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (h) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (g) and (h) of this section, respectively, together with any extension pursuant to paragraph (i)(1) of this section or by agreement of the requester, the person making the request may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552 (a)(4). Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process shall be directed to the official specified in the appropriate appendix to this subpart as the official to receive such process.

(l) *Preservation of records.* Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(m) *Processing of requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the Departmental Disclosure Office, who will forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be considered not to have been received for purposes of paragraph (e) of this section until the request has been received by the appropriate component. A component receiv-

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ing an improperly addressed request forwarded by the FOIA/PA Section shall notify the requester of the date on which it received the request.

§ 1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A component shall provide a business submitter with prompt written notice of a receipt of a request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For business information submitted to the Department prior to July 14, 1987, the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The information is less than ten years old;

(ii) The information is subject to prior express commitment of confidentiality given by the component to the business submitter, or

(iii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after July 14, 1987, the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (c)(1) of this section shall be required for a period of not more than ten years after the date of submission unless the